

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0017
Sales and Use Tax
For the Years 1997-Present

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ISSUES

I. Sales and Use Tax-Denial of Sales Tax Exemption

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-3-6, IC 6-2.5-5-8.

The taxpayer protests the denial of sales tax exemption on an airplane.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

The taxpayer is a limited liability corporation that owns an airplane. The taxpayer applied for an exemption from sales tax based on its status as a retail merchant engaged in the renting and leasing of the airplane to the public. The Indiana Department of Revenue, hereinafter referred to as the "department," denied this request for exemption. The taxpayer protested the denial and a hearing was held. This Letter of Findings results.

I. Sales and Use Tax-Denial of Sales Tax Exemption

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes a sales tax on the transfer of property in a retail transaction. IC 6-2.5-2-1. In the case of aircraft, taxpayers are to pay the tax directly to the department when registering the aircraft unless the aircraft qualifies for an exemption. IC 6-2.5-3-6. The taxpayer contends that the subject aircraft qualifies for an exemption from the sales tax because the taxpayer is a retail merchant in the business of leasing aircraft to the public in the ordinary course of business without changing the form of the aircraft. IC 6-2.5-5-8. The department denied this exemption contending that the taxpayer was a private flying club rather than a business engaged in the leasing of an airplane.

In support of its position, the taxpayer provided substantial documentation including a copy of the Articles of Incorporation, a tax return, flying log sheets, a copy of the computer home page, copies of checks paying sales tax on rentals, and financial records. Close scrutiny of the documentation, however, reveals several features which do not support the taxpayer's contention that the taxpayer is a business rather than a flying club. Article I of the Articles of Incorporation states that as follows:

The purpose of this Company shall be to provide for its Members convenient means for operating high performance aircraft for personal non-commercial use, at economical rates.

Further, Article XVII indicates that any net profit of the corporation will be used to reduce the hourly flying rates for members. This is a private benefit to the owners rather than an anticipation of earning an income as in the typical business. The corporate internet home page discusses membership requirements. Submitted records indicate that most rentals are to members at a significantly reduced membership hourly rental rate. The rental fees do not approach covering the taxpayer's expenses. In fact, tax records indicate that the corporation lost at least \$7,800.00 each year between 1997 and 2002 with an average loss of \$16,000.00. The evidence supports the determination that the taxpayer is not in reality a leasing business but rather a private flying club. It is not entitled to an exemption from the sales tax on the purchase of its aircraft.

FINDING

The taxpayer's protest is denied.

II. Tax Administration-Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. The taxpayer contends that the negligence penalty is inappropriate in this situation because the taxpayer did not intentionally fail to pay the proper amount of tax.

Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

After reviewing the particular facts and circumstances of this case, the department finds that the negligence penalty is not warranted.

FINDING

The taxpayer's protest is sustained.

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